

COMMENT LETTER # 3

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VIA ELECTRONIC MAIL (John_Webb@dot.ca.gov) – ORIGINAL BY U.S. MAIL

John D. Webb, Chief
Office of Environmental Services
Caltrans North Region
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: Comments of Voices for Rural Living and Shingle Springs Neighbors for Quality Living on Draft Supplemental Environmental Impact Report for Shingle Springs Interchange Project

Dear Mr. Webb,

On behalf of Voices for Rural Living and Shingle Springs Neighbors for Quality Living, we submit the following comments on your Draft Supplemental Environmental Impact Report (“DSEIR”) for the Shingle Springs Interchange Project (“Project”).

I. THE SUPPLEMENTAL EIR DOES NOT ADEQUATELY DISCLOSE AND ANALYZE THE PROJECT’S TRAFFIC-BASED OZONE PRECURSOR EMISSIONS.

In response to the Third District Court of Appeal’s ruling of November 8, 2005, the DSEIR attempts to disclose, but still does not adequately analyze, ozone precursor emissions. DSEIR 5.5-4 – 5.5-11. The DSEIR gives no indication of whether the amounts of ozone precursor emissions generated by the Project will cause the state ozone standard of 0.09 parts per million (ppm) set by the California Clean Air Act to be violated.

In determining whether the emissions generated by the Project present a significant impact, Caltrans settled on the U.S. Environmental Protection Agency’s “NOx SIP Call” and Clean Air Interstate Rule methodologies, both of which consider the impacts of ozone precursor emissions on *downwind regions* rather than within the emission-generating region. Without illustrating the reasoning it used to determine “that a contribution of more than 1 percent of the emissions budget is an appropriate metric for determining the significance of the project’s ozone precursor emissions,” Caltrans summarily declared the project’s emissions not significant. DSEIR 5.5-8–5.5-9. Because Caltrans’ reasoning is not fully described, it is difficult for the public to evaluate and comment on this aspect of the DSEIR.

Furthermore, this analysis is not CEQA-compliant because the EPA methodologies on

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which Caltrans relied do not evaluate the impacts of ozone precursor emissions on local air quality, but rather on remote and out-of-state air quality. Using these methodologies, it is impossible for Caltrans to determine whether these ozone precursor emissions levels are likely to cause the exceedance of state air quality and ozone standards. Simply claiming that “1 percent of the emissions budget” is a sufficient standard for determining the significance of the project’s ozone precursor emissions ignores the fact that these EPA methodologies were developed in order to evaluate ozone impacts on regions many miles distant from the source of emissions. DSEIR 5.5-8. They indicate nothing about ozone impacts on the local area or nearby areas, and Caltrans has neglected to explain the value of applying these methodologies in the DSEIR.

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Using this 1 percent standard, appropriate for determining the project’s impacts on Nevada (a downwind state) but not necessarily on the rest of El Dorado County, Caltrans has determined that the project’s impacts will be insignificant. DSEIR 5.5-9. This standard indicates nothing about the project’s capacity to cause the state ozone standard of 0.09 ppm to be exceeded in the local nonattainment area. Considering that the area is already in nonattainment for ozone, the emission of even a cognizable percentage of the area’s emissions budget may well be a significant impact. Unfortunately, Caltrans has not yet presented a reasonable strategy for evaluating this impact.

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II. THE SUPPLEMENTAL EIR DOES NOT ADEQUATELY EVALUATE GROWTH-INDUCING IMPACTS FROM THE INTERCHANGE AND CASINO.

The DSEIR, like the EIR on which it is based, fails to consider the adverse impacts of the introduction of the urban Casino in the heart of a rural, residential zone. DSEIR 5.9-1. The project is also likely to have negative and disruptive socioeconomic impacts on gaming-related tourism and commercial uses in South Lake Tahoe, impacts that also remain ignored by the DSEIR. DSEIR 5.9-3. Caltrans’ refusal to address this impact violates CEQA. *Citizens for Sensible Dev. of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 169-71 (agency must assess proposed shopping center’s impact on physical deterioration of downtown); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 445-46 (same); CEQA Guidelines §15064(e).

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III. THE NEW ALTERNATIVES PRESENTED BY THE SUPPLEMENTAL EIR ARE NOT SIGNIFICANTLY DIFFERENT FROM THOSE PREVIOUSLY PRESENTED.

In all areas of impact compared, Alternatives D and E are identical to Alternative B and almost identical to Alternative C. They do not represent any significant savings in any of the analyzed areas of impact. DSEIR 4-9.

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A. Alternative D Does Not Substantially Reduce Most of the Project’s Significant Environmental Impacts.

Alternative D will reduce most of the relevant impacts of the Shingle Springs casino/interchange project by no more than twenty percent. As indicated in Table 4-1 (DSEIR 4-3), although the gaming floor area of the casino has been reduced, the hotel in Alternative D includes just fifty fewer rooms than the proposed hotel/casino, a reduction of just twenty percent. The number of rooms in the hotel will have a substantial influence over the amount of parking required and the amount of traffic generated, two environmental impacts that would not see substantial relief under Alternative D.

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The DSEIR claims that the “reduced square footage of Alternative D would result in less wastewater generation and disposal than that identified for the Proposed Project” and bases this reduction on its claim that “Alternative D is approximately 63 percent as large” as the originally

evaluated project. Since the number of hotel rooms in Alternative D remains so high, however, it is unlikely that the project's wastewater treatment requirement would be reduced to the same degree as the reduction in square footage. Similarly, the DSEIR correlates the reduction in water delivery requirements for Alternative D with the reduction in square footage, not the reduction in hotel rooms. Evaluating these impacts on the basis of the number of hotel rooms remaining rather than the square footage would have presented a more accurate picture of the project's true water delivery and wastewater treatment needs. DSEIR 4-5.

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The DSEIR explains that the tallest structure in the proposed hotel/casino project "is proposed to be 115 feet high from its base elevation," but does not compare the height of Alternative D with the proposed hotel/casino. DSEIR 4-4.

B. Alternative E Does Not Substantially Reduce Most of the Project's Significant Environmental Impacts.

As with Alternative D, the wastewater treatment and water delivery requirements for Alternative E are reduced solely on the basis of reduced square footage, rather than a reduction in any relevant usage statistic. No analysis is provided or referenced in this section that would describe the relationship between a variety of uses and wastewater treatment and water delivery requirements; instead, it is assumed without support that these requirements are based on square footage alone. DSEIR 4-8.

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The DSEIR explains that the tallest structure in the proposed hotel/casino project "is the casino at 115 feet," but does not compare the height of Alternative E with the proposed hotel/casino, instead merely claiming that the height of the buildings would be "less". DSEIR 4-7.

Caltrans' failure to present meaningful alternatives and adequately evaluate their environmental impacts violates CEQA.

IV. DOCUMENTS INCORPORATED BY REFERENCE WERE NOT ADEQUATELY AVAILABLE TO THE PUBLIC IN EL DORADO COUNTY.

The DSEIR circulated for public review did not include a key study on the Project's potential environmental impacts, a study which was necessary for informed public review. Appendix B, the Supplemental Traffic Review, was not included in the circulated DSEIR and did not appear on the Caltrans website until well after the DSEIR was posted to that website, making it difficult for members of the public to perform an informed review of the DSEIR within the 45 days allotted for public review and comment.

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The original EIR, on which this DSEIR is based, contained 14 separate appendices (A thru K), which appear as the final 392 pages of the DEIR/EA document and contained both technical and non-technical data. Although the table of contents listed these appendices, it did not indicate the availability of numerous technical studies on which the conclusions of the EIR were based and which were referred to in the text of the EIR. These technical studies, which were not included in the circulated EIR, are substantive documentation integral to the implementation of the CEQA review of the Shingle Springs Interchange Project. That documentation was not made available to agencies and the public. It should have been attached as appendices and circulated with the DEIR/EA so that the entire DEIR/EA including its "appendices" could be reviewed as a unit.

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For example, although the EIR's traffic analysis discusses and relies on the Urban Systems Marketing Study for its trip reduction estimates, the Urban Systems study is completely omitted from the EIR and its Technical Studies. This omission has not been rectified in the DSEIR. This

document is crucial to public review and comment, as it speculates on the number of cars, otherwise en route to South Lake Tahoe, that will be diverted by the new Casino. As the air quality impacts of the Interchange are integrally related to the diverted traffic numbers, public, governmental and scientific review of the marketing study is essential. Withholding this key document underpinning Caltrans' EIR violates CEQA Guidelines §15150(b), which directs that:

Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated documents shall be made available to the public in an office of the lead agency *in the county where the project would be carried out* or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

Id., emphasis added.

Contrary to this clear directive, Caltrans violated CEQA by placing the EIR's incorporated documents in another county – Sacramento – thus thwarting public review. Caltrans' repeated failure to provide proper public access to the documents referenced in its EIR clearly violates CEQA Guidelines §15150(b).

CEQA regulations regarding information that must be contained in an EIR state that review of technical data, maps, plot plans, diagrams, and similar relevant information must be sufficiently summarized “to permit full assessment of significant environmental impacts by reviewing agencies and members of the public.” § 15147. Further, highly technical data may be included in “appendices to the main body of the EIR.” *Id.* Such appendices “shall be readily available for public examination and *shall be submitted to all clearinghouses which assist in public review.*” *Id.* (emphasis added).

In its Public Notice of Availability of the DEIR/EA, Caltrans stated that certain “technical reports” are available for public review only in its Sacramento office during business hours. Although the DEIR/EA was also available from the Bureau of Indian Affairs (“BIA”) or online at the Department of Transportation website, no other alternative for review was offered with regard to the maps/plans or technical reports. Rather, those key documents could be reviewed only at a location one hour's driving time from the interchange site and affected community.

V. THE EIR AND DSEIR DO NOT EVALUATE THE PROJECT'S IMPACTS BASED ON AN ADOPTED EL DORADO COUNTY PLAN

Despite Caltrans' insistence, repeated in the DSEIR, that the project is not inconsistent with the El Dorado County General Plan in part because the General Plan does not apply to the Rancheria or lands in the Indian Reservation Road system (DSEIR 5.2-1) the project's impacts must nevertheless be evaluated in terms of their consistency with the adopted General Plan. It is a settled principle of CEQA law, codified in CEQA Guidelines §15125 and Appendix G, that an “EIR shall discuss any inconsistencies between the proposed project and applicable general plans.” CEQA Guidelines §15125(d) (formerly (b)). An EIR “cannot pass CEQA muster” if it is prepared in the absence of a valid, adopted general plan. *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th at 950-951. Whether or not the El Dorado County General Plan applies to the Rancheria for purposes of zoning and permissible land uses, the project impacts must still be evaluated in reference to a properly adopted general plan.

Adoption of the 1996 El Dorado County General Plan and certification of its EIR was set aside because the County failed to comply with CEQA. Nonetheless, the EIR impermissibly

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relied in part on the unadopted 1996 Plan: “[T]he cumulative setting is based on development anticipated under the 1996 El Dorado County General Plan.” Although the EIR stated that this plan was under revision, it failed to disclose that it was *voided* because of non-compliance with CEQA. Caltrans’ reliance on an invalid general plan did not end there. The EIR’s “[c]umulative traffic volumes were based on the El Dorado County Traffic Model as established for the [unadopted] 1996 El Dorado County General Plan.”

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The DSEIR does not correct these failures by altering these references to conform them to any properly adopted El Dorado County General Plan. As such, the DSEIR and the EIR on which it is based remain in conflict with CEQA.

VI. THE DSEIR AND EIR FAIL TO ADEQUATELY EVALUATE THE PROJECT’S SOIL EROSION IMPACTS.

The CEQA Guidelines direct, in Appendix G, section VIII(c), that an EIR must analyze the project’s potential to substantially alter the existing drainage pattern of the site in a manner which would result in substantial erosion or siltation on- or off-site.

The construction of the interchange and casino will involve soil-disturbing activities such as vegetation removal, grading, and excavation which may result in soil erosion and sediment discharge into surface waters, increased turbidity, and downstream sediment deposition. The EIR chapter containing information on soil erosion (which excludes impacts from the casino itself) states that “the extensive excavation and grading associated with the Proposed Project *could potentially result in soil erosion* as hillsides are stripped of existing vegetation and the topography is recontoured during construction operations”, emphasis added. Yet without even considering the massive grading required by construction of the proposed casino – the excavation of 227,000 cubic yards of earth from steep slopes – the EIR asserted that “no cumulative geologic, soils, or seismic impacts are anticipated to occur as a result of the proposed interchange project.” Instead of correcting this omission, the DSEIR simply states that because soil erosion impacts were found to be less-than-significant in the 2001 NIGC EA, and the same mitigation measures and construction standards would apply to Alternatives D and E, the soil erosion impacts of these alternatives would also be less-than-significant. DSEIR 5.3-2.

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As before, Caltrans has failed to integrate the soil erosion information from the Interchange with that from the Casino. Caltrans performed no independent analysis of the Casino’s impacts, save to incorporate by reference the deficient Casino EA. With the information contained in the EIR, the public cannot accurately comment on the combined effects of the two projects on soil erosion, sediment discharge into surface waters, increased turbidity, and downstream sediment deposition.

VII. THE DSEIR AND EIR FAIL TO INDEPENDENTLY ANALYZE THE PROJECT’S TRAFFIC AND AIR QUALITY IMPACTS

Caltrans is obligated to independently analyze the traffic and air quality impacts of facilities that it constructs regardless of who is funding the project. 40 C.F.R. §1502.1 (NEPA requires “full and fair discussion” and statements shall be “supported by evidence that the agency has made the necessary environmental analyses”); CEQA Guidelines § 15084(e); *Citizens to Preserve Ojai v. County of Ventura* (2d Dist. 1995), 176 Cal.App.3d 421, 432 (agency itself must conduct reasonable amount of original research to determine project’s environmental effects). An analysis of the traffic data and air quality data used in the Final Environmental Assessment: Shingle Springs Rancheria Hotel and Casino Project, El Dorado County, California shows that the same data was used by Caltrans in the subject DEIR/EA. Caltrans did no additional, independent research on traffic generation by this casino development which will generate over 98% of the traffic on the Caltrans interchange. The DSEIR has not corrected this omission.

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DSEIR 5.4-1--5.4-5.

Caltrans had available the Barona study from San Diego which contradicts Caltrans trip generation assumptions, yet Caltrans did not discuss or rebut that study in the DSEIR. Caltrans is aware of the fact that an event center with the potential for an additional 4,810 plus peak hour trips (or double for two shows nightly) had been casually pulled from the project by a simple statement in the EA's FONSI that it was no longer included in the project. The issue of the event center is discussed elsewhere in these comments, and Caltrans has an independent obligation under CEQA to analyze the traffic and air quality impacts of that center since it is a foreseeable consequence of the project.

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The original EIR understated its peak hour traffic impacts and the DSEIR has not corrected this flaw. The EIR assumed that the Shingle Springs Casino will generate 9,404 weekday trips and 14,088 Saturday trips (Table 5.4-6, page 5.4-10), but offers no basis for its claim that visitation and travel patterns for the Shingle Springs Casino would be higher on a Saturday than on a Friday. The Shingle Springs Casino is substantially closer (over 1 hour in good driving conditions each way) and more convenient (no snow and ice in the winter) to major markets. Because of the Shingle Springs Casino's proximity to its markets, it can reasonably expect to attract more day visitors rather than long term overnight visitors. For this reason the Shingle Springs Casino provides only 250 hotel rooms (418 within 10 miles), South Lake Tahoe has 2,253 rooms at its casinos (10,000 within 10 miles) and Reno/Sparks has 12,800 at its casinos (25,000 within 10 miles). Obviously the Shingle Springs Casino does not expect its patrons to stay overnight. Thus it can be assumed that there is no reason to believe that the Shingle Springs Casino will replicate the travel pattern of South Lake Tahoe with Saturday/Sunday being big travel days. There is, however, evidence that would indicate that weekdays are the big travel days for a large casino near urban gambling markets in California. The DSEIR has not revisited the traffic planning assumptions from the EIR.

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Voices incorporates by reference its comments of June 20, 2002 on the Draft EIR for this point. Because the DSEIR has not addressed many of these flaws in the original EIR, Caltrans remains noncompliant with CEQA.

CONCLUSION

The Shingle Springs Interchange Project will have far-reaching significant impacts that were not adequately addressed in the EIR and have still not been addressed in the DSEIR. Most importantly, the Court of Appeal's ruling on the EIR's failure to adequately evaluate air quality impacts has not been fully addressed. For these reasons, we request that a revised DSEIR be circulated for public review, as required by CEQA.

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Very truly yours,

Marnie Riddle
Attorney, Voices for Rural Living
and Shingle Springs Neighbors for Quality
Living

COMMENT LETTER #3 RESPONSE

Comment Letter #3 – Voices for Rural Living

3-1. This comment claims that Caltrans must examine the significance of the Interchange Project's ozone precursor emissions relative to the State ozone standards. The Court of Appeal ruled that Petitioners had failed to exhaust their administrative remedies on this point and therefore excluded it from these proceedings. Accordingly it is beyond the scope of the Supplemental EIR. In any case, as explained in more detail in Response 2-6, above, the Interchange Project's ozone precursor emissions are not significant under the State or federal standards.

3-2. This comment asserts that Caltrans has not explained the basis of its 1 percent significance measure. The basis of that measure is explained at length in Section 5.5-7 of the Supplemental EIR. Please also see Responses 2-2 through 2-17, above.

3-3. This comment suggests that the 1 percent measure of significance the Supplemental EIR uses is not appropriate because it “do[es] not evaluate the impacts of ozone precursor emissions on local air quality.” On the contrary, by comparing the Interchange Project's project-specific emissions to the local motor vehicle emissions budgets – as the Court of Appeal expressly required – the Supplemental EIR directly evaluates the impacts of ozone precursor emissions on local air quality and on the ability of the Sacramento region to comply with applicable air quality standards.

Please see Responses 2-2 through 2-17, above, for more detail on these points.

3-4. This comment again objects to the 1 percent significance measure and raises issues regarding the State ozone standard. Please see Responses 2-2 through 2-17 and 3-1, above.

Further, the 1 percent standard could be applied to this project to determine its impact on the State of Nevada as the commenter suggests (pursuant to a Clean Air Act section 126 petition to EPA), and it would be a valid application. However, that is neither the task nor the goal here. The geographic expanse of the area analyzed is irrelevant to the appropriateness of the 1 percent measure. Caltrans looked for a viable and applicable significance measure for this unprecedented evaluation of a transportation-related project and determined that the NOx SIP Call and CAIR protocols provide an appropriate starting point because they involve the significance of contributions to nonattainment, include mobile sources in their application, and have been upheld by the federal courts.

3-5. This comment raises issues about the casino/hotel's impacts on surrounding land uses and its socioeconomic impacts. These issues are beyond the scope of the Court of Appeal's decision, having been litigated and decided previously against the commenter by both the trial court and the Court of Appeal. Decision at 39-40, 53-54. Accordingly, they are beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and the 2002 Final EIR provided detailed responses to those comments. 2002 Final EIR at Responses 42-18, 42-23, 42-24; *see also* Responses 40-7, 51-2, 51-3, 51-11 and 51-12.

3-6. This comment suggests that Alternatives D and E, analyzed in the Supplemental EIR, “do not represent any significant savings” in any environmental impact areas. This is not correct. As the Supplemental EIR explains, these alternatives would have less impact than the proposed

project in nearly all impact areas. For example, Alternative D would reduce the peak flow of wastewater from approximately 200,000 gallons per day (gpd) to approximately 130,000 gpd. Alternative E would reduce this amount even further to approximately 100,000 gpd. Similarly, Alternative D would reduce the estimated amount of potable water required daily, and therefore the impact on potable water supplies and the impacts of water delivery, from approximately 76,000 gpd to approximately 48,000 gpd. Alternative E would reduce this further to approximately 24,000 gpd. Alternatives D and E are substantially smaller than the proposed project, and thus also would reduce or avoid environmental impacts as compared to the proposed project in many other impact areas. For example, another notable area of reduced impact is in visual impacts. Alternative D would involve smaller buildings and Alternative E would eliminate the hotel altogether, thereby removing nearly 150,000 square feet of building area from the project. These changes would notably reduce (already less-than-significant) visual impacts. Please also see Response 2-4, above, for additional information on this point.

3-7. This comment claims that Alternative D will not provide sufficient reduction in environmental impacts. The Court of Appeal required the evaluation of only one alternative. By evaluating two, the Supplemental EIR substantially broadens and expands the analysis. “CEQA does not require that every conceivable alternative be stated in the [EIR] nor that the alternatives that are stated be described in every possible detail.” *Rio Vista Farm Bur. Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376. “CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566. In any case, Alternative E is very different from the proposed project in that it not only reduces the casino and all related features by 50 percent, but it eliminates the hotel entirely.

The comment specifically claims that “Alternative D will reduce most of the relevant impacts of the [proposed project] by no more than twenty percent.” The comment reasons that this is because the hotel is reduced by twenty percent. However, the casino and all ancillary structures and features, including parking, are also reduced by at least 50 percent. Supplemental EIR at Tab. 4-1. Accordingly, the total project is reduced by approximately 37 percent. Supplemental EIR at p.4-5.

The comment also suggests that the anticipated reductions in water demand and wastewater generation are inaccurate because they do not account for the hotel being reduced to a lesser extent than the casino. The commenter notes that the Supplemental EIR states that Alternative D is approximately 63 percent as large as the proposed project (or, alternatively, is 37 percent smaller) (contradicting this commenter’s claim that the entire reduction in the project is only 20 percent). The Supplemental EIR anticipates that the reduction in peak wastewater generation would only be 35 percent. Supplemental EIR at p.4-5.

3-8. This comment is similar to Comment 3-7, but it is directed at Alternative E. It is also incorrect. For example, the Supplemental EIR finds that Alternative E is approximately 69 percent smaller than the proposed project, but that peak wastewater generation would only be reduced by approximately 50 percent. Supplemental EIR at Section 4.2.3. Also, the facet of this comment regarding the disproportionate reduction between the hotel and casino does not apply here because the hotel was completely removed. Thus, to the extent the Supplemental EIR used

the approach the commenter suggests, the commenter's concern does not apply with respect to Alternative E. Please also see Response 3-7, above.

3-9. This comment asserts that the Draft Supplemental EIR posted on the Caltrans website did not initially include Appendix B (a four-page letter describing the trip generation calculations for Alternatives D and E). Please see Response 2-38, above. In summary, even though Appendix B was not initially available on the Caltrans website, it was available in hard copy for the full 45-day comment period. Accordingly, CEQA's notice and availability requirements were satisfied, and there was no prejudice to commenting parties.

3-10. This comment raises issues about the inclusion of technical reports in the 2002 Final EIR. This issue is beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Decision at 54-57. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and the 2002 Final EIR provided detailed responses to those comments. 2002 Final EIR at Responses 42-1, 42-2, and 42-3.

3-11. This comment raises issues about the Interchange Project's consistency with the El Dorado County General Plan and the validity of that plan. This issue is beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Decision at 53-54. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, similar comments were made on the 2002 Draft EIR and the 2002 Final EIR provided detailed responses to those comments. *See, e.g.*, 2002 Final EIR at Responses 39-2, 39-10.

3-12. This comment raises issues about the Interchange Project's soil erosion impacts. This issue is beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Decision at 35-36. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, similar comments were made on the 2002 Draft EIR and the 2002 Final EIR provided detailed responses to those comments. *See, e.g.*, 2002 Final EIR at Response 39-16.

3-13. This comment raises issues about the 2002 EIR's incorporation and use of information developed in the 2001 NIGC EA (the environmental assessment for the hotel and casino). This issue is beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Ruling at 4-5; Decision at 7-8, 29-34. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and the 2002 Final EIR provided detailed responses to those comments. 2002 Final EIR at Response 42-4; *see also* Responses 36-1, 39-1, 43-2, and 46-3.

3-14. This comment raises issues about the Interchange Project's trip generation estimates. This issue is beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Ruling at 21-22 ("a review of the detailed analysis of traffic impacts in the [2002] EIR and the thorough traffic study prepared for the [2002] EIR reveals a substantial basis for the methodology and assumptions used in estimating trip rates"); Decision at 41 ("Caltrans has adequately defended its method of determining the trip generation rates"). Accordingly, this issue is beyond the scope of the

Supplemental EIR. Further, this commenter made a nearly identical comment on the 2002 Draft EIR and Caltrans responded to that comment in the 2002 Final EIR. 2002 Final EIR at Response 42-4. Please also see Response 2-24, above.

3-15. This comment raises issues about the Interchange Project's traffic impacts and the 2002 EIR's traffic analysis. These issues are beyond the scope of the Court of Appeal's ruling, having been litigated and decided against the commenter by both the trial court and the Court of Appeal. Decision at 41-43. Accordingly, these issues are beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. 2002 Final EIR at Responses 42-4, 42-5 and 42-6.

3-16. This is a summary and conclusory comment. Caltrans disagrees with the commenter's contention that the Interchange Project "will have far-reaching significant impacts that were not adequately addressed in the EIR and have still not been addressed in the" Draft Supplemental EIR. Caltrans also disagrees with the commenter's contention that the Supplemental EIR does not respond to the Court of Appeal. On the contrary, Caltrans determined that substantial evidence demonstrates that the Supplemental EIR is adequate under CEQA and responds fully to the Court of Appeal's decision.